

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

MARSHALL DIVISION

SHAMARCUS T. CARTER, #02278813	§	
VS.	§	CIVIL ACTION NO. 2:21cv421
DIRECTOR, TDCJ-CID	§	

ORDER OF DISMISSAL

Petitioner Sharmarcus Carter, a prisoner confined at the Polunsky Unit within the Texas Department of Criminal Justice (TDCJ) proceeding *pro se*, filed this petition for a writ of habeas corpus pursuant to § 2254 challenging his Cass County, Texas, conviction. The petition was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On November 1, 2023, Judge Payne issued a Report, (Dkt. No. 20), recommending that Petitioner's habeas petition be denied and that the case be dismissed with prejudice. Judge Payne further recommended that Petitioner be denied a certificate of appealability *sua sponte*. A copy of this Report was sent to Petitioner at his address, with an acknowledgment card. Petitioner filed a motion to set aside the findings, which are hereby construed as timely objections to the Report,(Dkt. No. 22).

Petitioner's objections are without merit. He has not met his burden under the AEDPA as he failed to show that the state court's adjudication of his habeas claims was unreasonable or contrary to federal law. *See Neal v. Vannoy*, 78 F.4th 775, 785 (5th Cir. 2023) (discussing the Petitioner's high burden under the AEDPA). He also identifies no error within the Magistrate Judge's Report. Finally, Petitioner's objection to the Magistrate Judge issuing his Report is wholly

without merit—as a District Judge may refer pre-trial matters to a Magistrate Judge for a Report and Recommendation, for which no consent is required. *See Newsome v. E.E.O.C.*, 301 F.2d 227, 230 (5th Cir. 2002).


The Court has conducted a careful *de novo* review of the record and the Magistrate Judge’s proposed findings and recommendations. *See* 28 U.S.C. §636(b)(1) (District Judge shall “make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.”). Upon such *de novo* review, the Court has determined that the Report of the United States Magistrate Judge is correct, and Petitioner’s objections are without merit. Accordingly, it is

ORDERED that the Report and Recommendation of the United States Magistrate Judge, (Dkt. #20), is **ADOPTED** as the opinion of the Court. Petitioner’s objections, (Dkt. #22), are **OVERRULED**. It is also

ORDERED that Petitioner’s habeas petition is **DENIED** and the above-styled civil action is **DISMISSED** with prejudice. Petitioner is further **DENIED** a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all motions which may be pending in this civil action are **DENIED**.

So ORDERED and SIGNED this 11th day of December, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE